IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

ITA No. 503 of 2006

Date of decision 23 .1.2007

Commissioner of Income Tax, Chandigarh II

.. Appellant

Versus

M/s Semiconductor Complex Ltd. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE VINOD K.SHARMA

PRESENT: Mr.SK Garg, Advocate for the Appellant

M.M.Kumar, J.

The revenue has invoked the jurisdiction of this Court under Section 260(A) of the Income Tax Act,1961 (for brevity 'the Act') by preferring the instant appeal against the order of the Income Tax Appellate Tribunal, Chandigarh Bench B for challenging the order dated 21.3.2006 passed in ITA Nos. 727 and 728 /Chandi/ 2002. ITA No. 503 and 504 of 2006 are being taken up together as the question of facts and law are common.

Brief facts may first be noticed.

The assessee is an enterprise of Government of India and the Assessing Officer during verification discovered that the assessee has allowed its employees exemption in respect of LTC on the basis of the certificate/ declaration furnished to the effect that the employees or his / her family members have travelled to certain distance on LTC. The allegation

is that a number of employees of the assessee company had claimed LTC as exempt without actually spending the amount received from their employer. Accordingly, the assessee was asked by the revenue to produce evidence to prove that the LTC amount had actually been utilised by the employees concerned as per the provisions of Section 10(5) of the Act read with Rule 2B of the Income Tax Rules, 1962. The assessee company submitted its reply by stating that the company had allowed reimbursement on the strength of the certificate furnished by the employee on the allegation that no evidence was obtained by the employer regarding actual performance of the journey, the Assessing Officer held that the assesee company could not treat the LTC as exempt under the provisions of the Act and therefore he decided that the assessee had failed to deduct tax at source on the amount of LTC which was not exempt from the liability to pay tax under the Act. He accordingly treated the LTC amount as part of salary and worked out the TDS and passed an order under Section 201(1) of the Act by calculating the tax; and also levied interest under the provisions of Section 201(1A) of the Act. The Commissioner of Income Tax (Appeals) upheld the order passed by the Assessing Officer by observing that the LTC claim should be restricted to expenses actually incurred by the employee and merely because the assesee company has made payment to its employees on the basis of the certificate signed by them would not be sufficient to grant exemption because the requirement of law was that the actual expenses incurred by the assessee were required to be proved. Feeling aggrieved, the assesee approached the Income Tax Appellate Tribunal which reversed the view taken by the Assessing Officer and the Commissioner of Income Tax. The operative part of the order passed by the Tribunal is discernible from

the perusal of paras 11,12 and 13 of the order and the same reads as under:

> " We have considered the submissions of both the parties and gone through the material available on record. In the present case it is not in dispute that the disbursement has been made by the assessee for the expenses incurred by the employees on account of LTC. The assessee reimbursed the expenses incurred by the assessee after obtaining all the information in the prescribed form. The accounts of the assessee were subject to verification by the auditor appointed by CAG (Comptroller and Auditors General of India), in the present case it is not brought on record that the auditor had pointed out any instance where wrong reimbursement had been made. The Assessing Officer had also not pointed out any specific instance where the expenses were reimbursed on wrong undertaking given by any of the employees. On a similar issue, ITAT Calcutta "A" Bench in the case of Usha Martin Industries Ltd v. ACIT (2004) 86 ITJ 574 (Cal) .....
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> In the present case also the facts are similar which were in the case of aforesaid referred to case, in this case the assessee had reimbursed expenses for LTC to its employees without deducting tax at source on the basis that such payment were exempt under Section 10(5) relying on the declaration filed in the prescribed form by the assessee giving full details of journey undertaken by them and the expenses incurred by them. So, it cannot be said that the action of the assesee was not bonafide. Therefore, we are of the view that the assesee cannot

be treated in fault under section 201 for short deduction of tax and interest under Section 201A also could not be levied. In that view of the matter we reverse the order of the authorities below.

As regards to the judgement of the Hon'ble Calcutta High Court in the case of Cesc Ltd. and another (supra) is concerned, in the said case officer concerned was authorised to pass an appropriate order in accordance with law but not to give effect thereto without leave of the Hon'ble High Court, accordingly writ petition of the assessee was dismissed by stating that it shall now be open for the Officer concerned to communicate the same and to take further steps thereon in accordance with law.

From the above, it appears that the issue was remanded back to the Assessing Officer for adjudication in accordance with law, so the facts are distinguishable from the facts of the present case. In view of the above discussion appeals of the assessee are allowed."

The revenue has claimed that the following question of law would arise for determination of this Court:

" Whether the ITAT was justified in allowing the appeal of the assessee holding that declaration filed in the prescribed proforma by the employee was having full details of journey undertaken and the expenses incurred by them, whereas, no such details are required to be filled in the proforma prescribed for filing the claim and hence were not available with the DDO

to hold it to be exempt u/s 10(5) of the Income Tax Act,1961 read with Rule 2B of the Income Tax Rules, 1962 ?"

After hearing learned counsel, we are of the view that once the Tribunal has recorded a categorical finding that the assesee had reimbursed the expenses incurred by its employees for LTC after obtaining all the information in the prescribed proforma then the assessee is entitled to exemption. Moreover, the accounts were subjected to verification by the Auditors appointed by the Comptroller and Auditor General of India and no discrepancy has been pointed out by the Auditors. The Assessing Officer has failed to point out any specific instance where the expenses have been reimbursed to an employee on the basis of a fraudulent or wrong certificate given by him/her. Moreover, there are categorical findings by the Tribunal that the exemption for LTC deserved to be granted to the assessee company because the declaration filed in the prescribed proforma by the assesee gives full details of journey undertaken by the employee and the expenses actually incurred by them. The action of the assesee company has been found to be bonafide.

In view of the above, we do not find that any question of law would arise warranting admission of the appeal because the fact as to whether an employee of the assessee company had undertaken journey to avail LTC and has claimed the same bona-fide is necessarily a question of fact. The Tribunal after going into the detailed certificate furnished on the prescribed proforma by the employees of the assesee company have found that full details of journey undertaken by them alongwith expenses incurred have been given. If that be so, then no question of law would arise because these are pure questions of fact. Therefore, both the appeals are decided

against the revenue and in favour of the assessee.

(M.M.Kumar)
Judge

(Vinod K.Sharma)
Judge

23.1.2007
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